

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
CALIFORNIA WATER SERVICE  
COMPANY (U 60 W), a for an order  
authorizing treatment of net proceeds  
from real property sales as subject to  
Public Utilities Code § 790 and for  
establishment of memorandum accounts  
to record net sales proceeds.

A.03-12-008

**PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES**

**I. INTRODUCTION**

Pursuant to Rules 44 through 44.3 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits its Protest to California Water Service Company's (Cal Water) Application No. (A.) 03-12-008. The application was filed in response to the ordering paragraphs of Cal Water's recent general rate case (GRC) decision, D. 03-09-021. The GRC decision directed Cal Water to file an application to implement the provisions of the Water Utility Infrastructure Act of 1995 (Infrastructure Act) The Infrastructure Act generally requires water utilities to reinvest the net proceeds from sales of utility property which is no longer needed in infrastructure improvements. The Act requires that the net proceeds from the sales of utility property be recorded in a memorandum account. Through this application, Cal Water seeks authority to establish two different interest bearing memorandum accounts. One memorandum account would record, on a going forward basis, the net proceeds from all sales of real property no longer needed for utility service. The second memorandum account would record the net proceeds from all sales of real property between 1996, the effective date of the Infrastructure Act, and the date of the application.

Consistent with the Commission's direction in the GRC decision, ORA intends to review the application for consistency with all applicable statutes and rules and will file a detailed report based on that review.

## **II. BACKGROUND**

This application was filed in response to the provisions of Water Utility Infrastructure Act of 1995 (Infrastructure Act), codified in Public Utilities Code Sections 789.1-790.1, and the ordering paragraphs of D. 03-09-021, Cal Water's most recent GRC decision.

The Infrastructure Act generally requires water utilities to sell property no longer needed to provide utility service, to record the net proceeds from the sale in a memorandum account and to invest the net proceeds in needed infrastructure. According to the provisions of the Act, the net proceeds from the sale of property are to be the primary source of capital for infrastructure investments.

Cal Water's last GRC was a case of first impression with respect to interpretation of the Infrastructure Act. As part of its showing, the company proposed both the construction of a new customer operations center in Chico and the sale of the old one. Cal Water contended that under the provisions of Public Utilities Code Section 790, the gain on sale from the old center accrued directly to shareholders. The Commission never reached the merits of Cal Water's interpretation of the Infrastructure Act noting that the company had provided insufficient information regarding the proposed replacement of the Chico customer center. (D. 03-09-021, p. 73)

The Commission did find that:

... the Infrastructure Act creates new incentives and that those incentives require even greater regulatory scrutiny of real estate transactions to ensure that the intended benefits to ratepayers materialize. Accordingly, the Commission must consider both the history of the property proposed to be sold, its use to provide service to customers, its historic ratemaking treatment, as well as any potential future use to serve

customers, whether any replacement property is needed, and such issues as may be specific to each proposed transaction. (Id., p. 73.)

In accordance with the Act, the Commission ordered Cal Water to:

- a. Track all utility property that was at any time included in rate base.
- b. Maintain sales records for each property that was at any time in rate base but which was subsequently sold to any party, including a corporate affiliate.
- c. Obtain Commission authorization to establish a memorandum account in which to record the net proceeds from all sales of no longer needed utility property.
- d. Use the memorandum account fund as the utility's primary source of capital for investment in utility infrastructure.
- e. Invest all amounts recorded in the memorandum account within eight years of the calendar year in which the net proceeds were realized. (Id., Ordering Paragraph (OP) 12.)

The company was directed to file an application within 90 days setting up an Infrastructure Act memorandum account with an up-to-date accounting of all real property that was at any time in rate base and that Cal Water has sold since the effective date of the Act. The Commission also noted that, according to the company's annual report, it was embarking on a multi-year real estate program to liquidate over \$10 million in property. (Id., p. 76) The company was directed to include in the application a detailed explanation of the real estate program from its beginning to current plans including a regulatory history of each property, the rationale for removing any property from rate base and supporting documentation. (Id., p. 76, OP 13.) The Commission further provided that "(t)he Commission staff, after careful review of the proposed transactions for compliance with all applicable statutes and rules, will file a detailed report on its review." (Id.) The instant application followed.

### **III. IDENTIFIED ISSUES:**

ORA is in the preliminary stages of reviewing the application and associated testimony and workpapers. ORA will conduct the necessary discovery,

investigation and analysis to respond to the Commission's request for a detailed review of company's response to the ordering paragraphs of the GRC decision.

Below is a non-exhaustive list of the issues ORA intends to examine:

1. The appropriateness of the criteria employed by the utility in determining when utility property is no longer used and useful.
2. The appropriate procedures for documenting and tracking the determination that property is no longer used and useful.
3. Who should be responsible for determining when property is no longer used and useful.
4. The impact of any timing differences between the point in time at which property was no longer used and useful and its removal from ratebase.
5. The definition of "real property" as that term is used in the Infrastructure Act.
6. The definition of "net proceeds" as that term is used in the Infrastructure Act including: (a) the calculation of "net proceeds" for different types of sales and property exchanges; and (b) the calculation of "net proceeds" if there has been compensation by insurance companies or other parties for damage to real property.
7. The appropriate ratemaking and accounting treatment for sales to affiliates.
8. The appropriate ratemaking treatment when property which is currently used and useful is replaced and then sold.( The Chico service center situation.)
9. The appropriate accounting mechanisms for tracking net proceeds and investments in infrastructure.
10. Procedures for maintaining the memorandum accounts and reporting requirements regarding memorandum account activity.

11. The appropriate interest rate for the memorandum accounts as well as the operative date.

As noted above, this list is not intended to be exhaustive as other issues may arise during the course of ORA's investigation.

#### **IV. PROCEDURAL RECOMMENDATIONS**

The company categorizes this proceeding as a rate setting matter and indicates that hearings may be necessary. It also proposes a schedule which includes a Water Division Report on March 8, 2004, and evidentiary hearings May 11-12. ORA agrees with the rate setting categorization. ORA also agrees that hearings may be necessary. However, ORA disagrees with the proposed schedule. First, ORA rather than the Water Division will be preparing the report requested by the Commission. Second, due to staffing constraints, ORA cannot prepare a report within the time frame proposed by the company. The staff responsible for processing this application is currently involved in the SoCal Water Region I and II GRC, A.03-10-006 and A.03-10-057. ORA's report for the Region II GRC is due on February 9 with evidentiary hearings beginning on March 1. The report on the Region I GRC is due on March 15 with evidentiary hearings beginning April 13. Given these staffing constraints, ORA recommends that a PHC be held in late March 2004 and that the ORA Report be due on July 15.

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## **V. CONCLUSION**

ORA agrees with Cal Water that this proceeding should be categorized as rate setting and that hearings may be necessary. ORA recommends that a PHC be scheduled for late March and that the ORA Report requested by the Commission be due on July 15, 2004.

Respectfully submitted,

/s/ PATRICK GILEAU

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Patrick Gileau  
Staff Counsel

Attorney for the Office of Ratepayer  
Advocates

California Public Utilities Commission  
770 "L" Street  
Sacramento, CA 95814  
Phone: (916) 324-8685  
Fax: (916) 327-1599

January 8, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document **PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES** on all known parties to **A.01-09-062 et al.** by e-mail to those parties who have provided e-mail addresses, and by mailing prepaid postage, first-class, a copy thereof properly addressed to each party.

Executed in San Francisco, California, on the **8th** day of **January, 2004**.

/s/ ALBERT HILL

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Albert Hill